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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,521	03/09/2004	Joseph E. Broyles	R254	2520
22692 7590 04/03/2007 REGINALD F ROBERTS JR 1422 HEARTHSTONE DRIVE BATON ROUGE, LA 70808-1161			EXAMINER SAN MIGUEL, ANITZA M	
			ART UNIT	PAPER NUMBER
			3733	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/03/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/708,521

Applicant(s)

BROYLES, JOSEPH E.

Examiner

Anitza M. San Miguel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/9/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Drawings***

The drawings are objected to because there are two sets of Figures 3A-3C with the difference that one refers to "the bubble level" (reference "18") and the other to "the pelvis level" (reference "18"). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

In page 8, paragraph 0023, reference "18" refers both to "the bubble level" and "the pelvis level" (page 10, paragraph 0027). It is noted that reference "28" also refers to "the pelvis level".

In page 8, paragraph 0024, reference "28" refers both to "the ball level" and "the pelvis level" (page 10, paragraph 0027).

The examiner requests clarification between "the bubble level", "the pelvis level" and "the ball level". For examination purposes, "the bubble level", "the pelvis level" and "the ball level" will be considered as the same embodiment performing the same functions.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Farmer et al. (Reference U.S. Patent "5,141,512", as cited in IDS).

Farmer et al. discloses a pelvis frame comprising: a first rigid elongated member (see Figure 10B below); a second rigid elongated member mounted on the first rigid

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elongated member in a perpendicular relationship thereto (see Figure 10B below); first and second pads attached to the first rigid elongated member in a perpendicular configuration (see Figure 10B below); a third pad attached to the second elongated member in a perpendicular configuration (see Figure 10B below); and means for varying position of the first, second, and third pads, and for fixating said position as required, for effecting orientation-determining contact of the first, second, and third pads with pelvic bone of the patient; the first, second, and third pads being contoured to conform to portions of the pelvic bone which said pads contact (col. 2, lines 4-16; col. 9, lines 14-31). The first and second pads include openings (63) for insertion therethrough of first and second wires used to determine the patient's orientation.

Claims 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Leone, Jr. (Reference U.S. Patent "6,302,890", as cited in IDS).

Leone, Jr. discloses a pelvis level comprising: a housing (42) which includes first and second parallel straight-line openings extending therethrough, for insertion therein of first and second wires used to effect temporary connection of the housing to pelvic bone of the patient; and a level (40), disposed in the housing (42) under a transparent cover, for determination of a level position of the housing (col. 6, lines 62-67; col. 7, lines 1-26). The pelvis level (40) is a bubble level (44) comprising a liquid including a bubble, disposed under a convex transparent cover. The pelvis level (40) is a ball level (44) comprising a ball disposed on a concave surface between the transparent cover and the concave surface (col. 6, lines 62-67; col. 7, lines 1-26). The ball, the cover, and

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the housing (42) are made of a material capable of withstanding steam sterilization. It is noted that it is inherent that the material to be used should be one that is capable of being sterilized, since the pelvis level will be used during a surgical procedure. Further it is noted that it is a matter of design choice whether the bubble or ball level is disposed under a convex transparent cover or concave surface. The level disclosed by Leone, Jr. is capable of performing the functions of the claimed pelvis level.

With regard to the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Farmer et al. and Leone, Jr. (i.e. "capable of withstanding steam sterilization"), which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farmer et al. (Reference U.S. Patent "5,141,512", as cited in IDS) in view of Leone, Jr. (Reference U.S. Patent "6,302,890", as cited in IDS).

Farmer et al. discloses a method comprising the steps of: providing a pelvis frame comprising a first rigid elongated member; a second rigid elongated member mounted perpendicularly on the first rigid elongated member; first and second pads attached to the first rigid elongated member; a third pad attached perpendicularly to the second rigid elongated member; and means for varying position of the first, second, and third pads, and for fixating said position as required, for effecting orientation-determining contact of the first, second, and third pads with the patient undergoing the surgery (col. 1, lines 63-67; col. 2, lines 1-3; col. 4, lines 3-14); adjusting the pelvis frame so that the first and second pads rest on the anterior superior iliac spines of the patient undergoing surgery; adjusting the pelvis frame so that the third pad rest on the pubic symphysis of the pelvic bone of the patient undergoing surgery (col. 8, lines 67-68 and col.9, lines 1-13); drilling first and second wires into the anterior superior iliac spines through first and second opening in the first or second pad contacting the anterior superior iliac spine on the side on which the surgery is to be performed (col. 9, lines 21-31); removing the

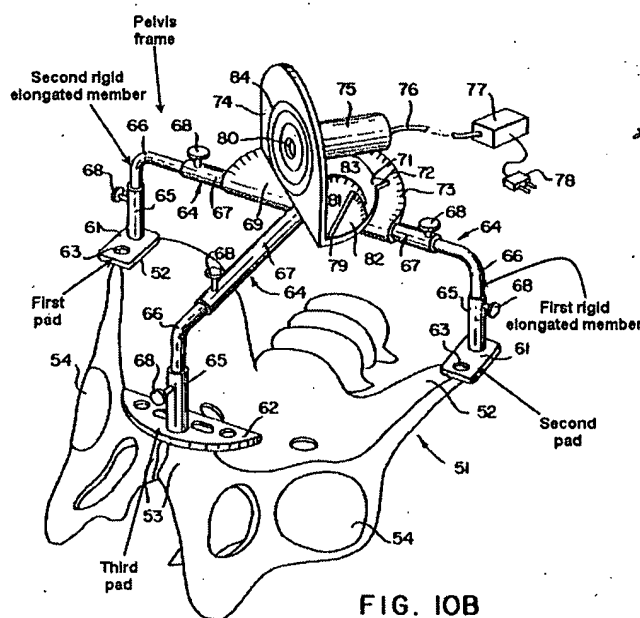
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pelvis frame from contact with the patient; turning the patient from back contact to side contact with an operating-room bed; and beginning the hip-replacement surgery (col. 11, lines 1-22). It is noted that the steps of removing the pelvis frame, turning the patient and beginning hip-replacement surgery would have been inherently carried out as part of the surgical procedure.

Farmer et al. discloses the claimed invention except for the steps of providing a pelvis level including a level disposed in a housing, which includes first and second parallel straight-line openings extending therethrough; sliding the pelvis level; adjusting position of the operating-room bed; and replacing the acetabular component. Leone, Jr. teaches to provide a pelvis level including a level disposed in a housing, which includes first and second parallel straight-line openings extending therethrough; sliding the pelvis level; adjusting position of the operating-room bed; and replacing the acetabular component (col. 7, lines 48-67; col. 8, lines 1-46) in order to visually observe when the "bubble" is appropriately located or "centered" within the level, therefore, optimizing the accurate positioning and insertion of the acetabular cup. It would have been obvious to one skilled in the art at the time the invention was made to have the method steps of Farmer et al. including the method steps of providing and sliding the pelvis level as well as adjusting position and replacing the acetabular component in view of Leone, Jr., in order to visually observe when the "bubble" is appropriately located or "centered" within the level, therefore, optimizing the accurate positioning and insertion of the acetabular cup.

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With regards to claims 8-10, Leone, Jr. discloses the limitations, as set forth in column 6, lines 62-67 and column 7, lines 1-26.



Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anitza M. San Miguel whose telephone number is 571-272-3279. The examiner can normally be reached on 8:00 am - 5:30 pm EST (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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